

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

VIRGINIA F.,

Plaintiff,

**5:21-cv-720
(GLS/CFH)**

v.

**COMMISSIONER OF SOCIAL
SECURITY,**

Defendant.

SUMMARY ORDER

Pending is an objection to a Report-Recommendation and Order (R&R), (Dkt. No. 19), which, among other things, recommends that defendant Commissioner of Social Security's decision be reversed because of errors in evaluating opinion evidence in connection with the residual functional capacity finding and plaintiff Virginia F.'s subjective complaints, and remanded for the calculation of benefits, (Dkt. No. 18). As is pertinent to the objection, the R&R reasons that remand for the calculation of benefits — as opposed to remand for further proceedings — is warranted because of the length of time Virginia's application for disability insurance benefits has been pending, there are no gaps in the record, and "the record contains persuasive proof of disability." (*Id.* at 54-

65.)

The Commissioner objects to the R&R to the extent that it recommends remand solely for the calculation of benefits. (Dkt. No. 19.) More specifically, the Commissioner contends that “such an extraordinary remedy is not warranted here” because further proceedings would not be “pointless” and the errors identified by the R&R are curable. (*Id.*) The Commissioner’s objection, which repeats the substance of an argument made in her underlying brief, (Dkt. No. 17 at 21 n.6), is general and triggers review for clear error only. See *Atkins v. Colvin*, No. 6:13-CV-161, 2014 WL 4637090, at *2 (N.D.N.Y. Sept. 16, 2014) (citing *Almonte v. N.Y. State Div. of Parole*, No. Civ. 904CV484, 2006 WL 149049, at *4 (N.D.N.Y. Jan. 18, 2006)).

This case undoubtedly has a unique procedural history, (Dkt. No. 18 at 2-4), and the Commissioner “does not object to the merits portion of the R&R,” (Dkt. No. 19 at 1). As constrained by the standard of review, the court cannot conclude that the R&R’s recommendation of remand solely for the calculation of benefits is clearly erroneous. For that reason, the R&R is adopted in its entirety.

Accordingly, it is hereby

ORDERED that the Report and Recommendation (Dkt. No. 18) is **ADOPTED** in its entirety; and it is further

ORDERED that Virginia's motion for judgment on the pleadings (Dkt. No. 14) is **GRANTED**; and it is further

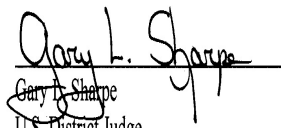
ORDERED that the Commissioner's motion for judgment on the pleadings (Dkt. No. 17) is **DENIED**; and it is further

ORDERED that the decision of the Commissioner is **REVERSED** and **REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g) for the calculation of benefits; and it is further

ORDERED that the Clerk close this case and provide a copy of this Summary Order to the parties in accordance with the Local Rules of Practice.

IT IS SO ORDERED.

September 30, 2022
Albany, New York


Gary L. Sharpe
U.S. District Judge